

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

UNITED STATES OF AMERICA

v.

Criminal Case No.: 5:05-00013

RICKY CAMPBELL

MEMORANDUM OPINION AND ORDER

Defendant pled guilty to a violation of 21 U.S.C. § 841(a)(1) for which he was sentenced to a term of sixty months of imprisonment. By Notice of Appeal filed on July 29, 2005, defendant appealed his sentence to the Fourth Circuit Court of Appeals. While his appeal was pending, on December 7, 2005, defendant filed a "motion for relief from Judgment or Order pursuant to Rule 60(b)." (Doc. # 77). Defendant's sentence was affirmed by the Fourth Circuit on July 12, 2006. On February 26, 2007, defendant filed a habeas corpus action under 28 U.S.C. § 2255. The § 2255 motion has not yet been decided.

Since filing the Rule 60(b) motion, defendant has also filed: 1) a motion for bond pending a ruling of that motion (Doc. # 80); 2) a motion to supplement his Rule 60(b) motion (Doc. # 93); 3) a motion for default judgment as to the Rule 60(b) motion (Doc. # 107); and 4) a motion to amend his Rule 60(b) motion (Doc. # 109).

Because there is no Rule 60(b) under the Federal Rules of Criminal Procedure, the court concludes that defendant's motion is filed pursuant to the Federal Rules of Civil Procedure.

However, that rule applies only to civil cases. The only civil case in which defendant is a party is his § 2255 habeas corpus action. No judgment has been entered in that case as of the date of this Memorandum Opinion and Order. Accordingly, defendant's Rule 60(b) motion is misplaced and/or premature. Furthermore, to the extent defendant is attempting to set aside his criminal judgment, he has not stated any grounds that would permit this court to do so under the Federal Rules of Criminal Procedure.

For the reasons discussed above, defendant's motion under Rule 60(b) is DENIED (Doc. #77). The court also DENIES the motion for bond (Doc. # 80); the motion to supplement defendant's Rule 60(b) motion (Doc. # 93); the motion for default judgment as to the Rule 60(b) motion (Doc. # 107); and the motion to amend (Doc. # 109).

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record and to defendant.

It is SO ORDERED this 31st day of August, 2007.

Enter:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge